

 **ORIGINAL**

FILED
U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**EX PARTE MOTION TO ADJOURN
THE APRIL 21, 2005 ARGUMENT ON
SCO'S MOTION TO AMEND ITS
COMPLAINT**

Case No. 2:03CV0294DAK
Honorable Dale A. Kimball
Magistrate Judge Brooke C. Wells

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Plaintiff The SCO Group, Inc. ("SCO") hereby moves the Court for a brief adjournment of the argument on SCO's Motion for Leave to File a Third Amended Complaint (Dkt. No. 322), which is currently scheduled for April 21, 2005.

On October 14, 2004, based upon newly discovered evidence, SCO moved to amend its complaint in order to add a single new copyright claim. That claim arises out of IBM's unauthorized use of SCO source code to develop its AIX for Power product. IBM obtained restricted access to the SCO code through "Project Monterey," a joint development effort between IBM and SCO's predecessor-in-interest.

After SCO requested this Court's leave to amend, the Magistrate Court entered an Order on January 18, 2005 that granted in large part SCO's renewed motion to compel substantial, long-outstanding discovery from IBM (the "Discovery Order"). In addition, the Magistrate Court (1) struck the prior Amended Scheduling Order sua sponte and (2) ordered the parties to submit a new proposed schedule by March 25, 2005.¹ On March 17, 2005, this Court scheduled argument on SCO's Motion to Amend for April 21, 2005.

SCO requests a brief adjournment of that argument for two principal reasons.

First, in reliance on discovery obtained since SCO filed its pending Motion to Amend, SCO will be seeking leave to amend its complaint further in order to add claims in addition to the currently proposed copyright claim. SCO submits that it would make sense for all of the proposed amendments to be considered together, rather than in a piecemeal fashion. IBM sought and received a substantial extension of time to comply with the Discovery Order, and is still in the process of producing discovery that the Court ordered. SCO anticipates that it will be in a

¹ Because the parties were unable to agree on a number of important scheduling points, they filed separate proposed scheduling orders on March 25, 2005.

position to file the additional amendments shortly after it receives and reviews the outstanding IBM discovery that is currently due on May 3, 2005.

Second, SCO's Proposed Scheduling Order, which is currently pending before the Court, sets June 17, 2005 as the deadline for amendments to the parties' pleadings. As SCO has explained, this new proposed amendment date would permit the parties approximately five months (under either of their proposed schedules) after such deadline to complete fact discovery – an amount of time roughly equivalent to the time the Court originally provided for fact discovery when it imposed the prior amendment deadline. If the Court agrees with SCO that the new scheduling Order, like the initial Order, should include a deadline before which the parties shall be entitled to amend their pleadings as of right, this will resolve SCO's current motion and its future motion to amend. In other words, the new amendment deadline that SCO proposes, if accepted, would obviate the need for additional briefing and court arguments on the parties' motions to amend.²

Accordingly, SCO respectfully requests that the Court adjourn the April 21 hearing on SCO's proposed Motion to Amend so that SCO may consolidate all of its proposed amendments into a single amended complaint and, if necessary, the Court may consider all such amendments together.

² IBM has filed its own motion effectively to amend one of its counterclaims outside of the time provided by the previous Amended Scheduling Order. On February 18, 2005, IBM filed a Motion for Entry of Judgment Limiting Scope of IBM's Ninth Counterclaim. Although IBM does not label its motion as one to amend its counterclaims, the motion seeks precisely that relief.

DATED this 11th day of April, 2005.

Respectfully submitted,

HATCH, JAMES & DODGE, P.C.

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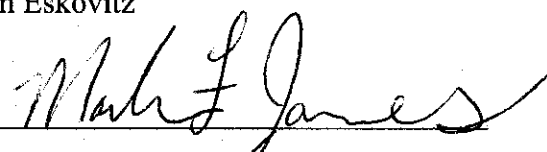
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By



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CERTIFICATE OF SERVICE

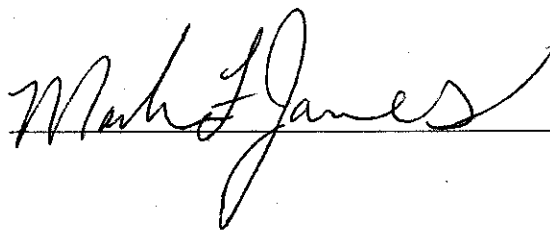
I HEREBY CERTIFY that I caused a true and correct copy of foregoing to be hand-delivered on this 11th day of April, 2005, to the following:

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A handwritten signature in cursive script, reading "Mark F. James", written over a horizontal line.